

IC 14-26-8

Chapter 8. Lakes; Changes in Levels

IC 14-26-8-1

Applicability of chapter

Sec. 1. This chapter applies to lakes having an area of at least ten (10) acres.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-2

"Shoreline or water line" defined

Sec. 2. As used in this chapter, "shoreline or water line" means the line that is formed around a lake by the intersection of the water in the lake with the adjoining land when the surface elevation of the lake is:

- (1) normal;
- (2) at the average level; or
- (3) at the average normal level established by law.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-3

Petition for control dam or other structure to maintain lake level

Sec. 3. (a) If:

- (1) at least twenty percent (20%) of the owners of land abutting upon or within one-fourth (1/4) mile of the shoreline or water line of a lake;
- (2) the department; or
- (3) the board of commissioners of a county in which a lake is located;

desire to stabilize, raise, or establish and maintain the level of the lake by means of a control dam or other structure, diverting water into or away from the lake, pumping water into or out of the lake, or other means, the landowners, department, or county commissioners may apply either separately or jointly for the construction, reconstruction, alteration, and rehabilitation of a control dam or other structure, the construction of pumping stations, the construction, reconstruction, repair, or recleaning of outlet or inlet ditches, or other means by filing a petition with the circuit or superior court of the county in which the greater or greatest area of the lake lies.

(b) A petition must be filed in duplicate with the clerk of the court.

(c) If the petition is approved by the court, attorney's fees become a part of the total costs of the project. If the petition is dismissed, the petitioners shall pay the attorney's fees.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-4

Contents of petition

Sec. 4. A petition must do the following:

- (1) State the name of the lake.

- (2) State the lake's location by section, township, range, and county.
- (3) State the lake's approximate surface area in acres.
- (4) Describe the nature of the work desired, whether it is:
 - (A) the construction, reconstruction, alteration, or rehabilitation of a control dam;
 - (B) the construction of a pumping station or a diversion ditch;
 - (C) the construction, reconstruction, repair, or recleaning of an outlet ditch;
 - (D) a combination of any number of purposes permitted by this subdivision; or
 - (E) another purpose.
- (5) Allege that the work is practicable and of public need.
- (6) State the level at which it is desired to maintain or stabilize the lake. The level must be stated with reference to at least one
 - (1) of the following:
 - (A) Sea level datum if ascertainable.
 - (B) A lawfully established staff gauge installed in the lake from which the desired water level can be readily observed by an interested or affected party.
- (7) If the lake lies in more than one (1) county, show the approximate surface area of the lake in acres that lies in each county.
- (8) If the lake or any part of the lake lies within a city or town, state the approximate surface area of the lake that lies within the city or town.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-5

Lake lying in two or more counties

Sec. 5. If the lake lies in at least two (2) counties, the surveyor of the county in which the greater or greatest area of the lake lies shall prepare the plans and specifications and the report required by this chapter.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-6

Bond to accompany petition

Sec. 6. If the petition is initiated by the owners of land abutting upon or within four hundred forty (440) yards of the shoreline or water line of the lake, the petition must be accompanied by a bond with good and sufficient freehold sureties to be approved by the clerk of the circuit or superior court. The bond must be:

- (1) payable to the state; and
- (2) conditioned to pay all costs if the court denies the petition.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-7

Docketing of petition; notice of hearing

Sec. 7. (a) Within ten (10) days after the filing of a petition, the clerk shall docket the petition as a cause of action pending in the circuit or superior court. The clerk shall cause notice to be given at least thirty (30) days before the date set for the hearing as follows:

(1) By publication one (1) time each week for two (2) consecutive weeks in not less than two (2) newspapers of general circulation published in each county in which the lake is located. If there are not two (2) newspapers of general circulation published in a county, notice shall be published in one (1) newspaper of general circulation published in the county.

(2) By posting a written or printed notice at the door of the courthouse in each county in which the lake lies.

(3) By sending written notice to the following:

(A) The county surveyor and county commissioners of each county affected.

(B) The department.

(b) The notice must do the following:

(1) Briefly describe the location and nature of the proposed work contained in the petition.

(2) Fix a day for the hearing on the petition.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-8

Viewers; determination

Sec. 8. Before the date set for the hearing, the names of the viewers of the proposed work described in the petition shall be determined as follows:

(1) The president of the board of commissioners of each county affected shall submit in writing to the clerk of the court in which the petition is filed the name of a member of the board of commissioners of the county who will be a viewer.

(2) The director shall submit to the clerk the name of a representative of the department who will serve as a viewer.

(3) The surveyor of each county affected shall serve as a viewer.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-9

Viewers; appointment and qualifications

Sec. 9. On the day set for the hearing on the form of a petition, the court shall appoint two (2) viewers who shall, with the viewers designated under section 8 of this chapter, pass upon the project as set out. The two (2) viewers appointed by the court:

(1) must be reputable freeholders;

(2) may not be qualified to sign the petitions;

(3) may not be related to an affected landowner; and

(4) must be residents of a county in which the lake lies.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-10**Restrictions on county commissioners as viewers**

Sec. 10. If a petition is filed alone by owners of land abutting or within four hundred forty (440) yards of the shoreline or water line of the lake, a member of the board of county commissioners may not serve as a viewer.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-11**Remonstrance or objection; time requirements**

Sec. 11. The following have ten (10) days, exclusive of Sundays, from the date of the hearing on the form of a petition to file with the court a remonstrance or an objection to the merits of the petition, notice, or eligibility of any of the viewers:

- (1) A person named in the petition.
- (2) A person who owns land abutting or within one-fourth (1/4) mile of the shoreline or water line of the lake.
- (3) The department.
- (4) The board of commissioners of a county in which the lake lies.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-12**Remonstrance or objection; dismissal of defective petition**

Sec. 12. After the ten (10) days prescribed by section 11 of this chapter have elapsed, the court shall consider each remonstrance or objection, if any. If the court finds the petition defective, the court shall dismiss the petition unless the petition is amended within a time fixed by the court.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-13**Replacement of disqualified viewers**

Sec. 13. If at least one (1) of the viewers is disqualified, the court shall, within ten (10) days of the date of disqualification, appoint an individual having the qualifications required by this chapter to replace the disqualified viewer as follows:

- (1) If the surveyor is disqualified, the court may appoint a qualified registered engineer to replace the disqualified surveyor.
- (2) If a county commissioner is disqualified, the court shall appoint another county commissioner from the same county to replace the disqualified commissioner.
- (3) If the representative of the department is disqualified, the court shall appoint a new representative from the department selected from a list of two (2) representatives recommended by the director.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-14

Objections to viewers; time requirements

Sec. 14. The following have ten (10) days, exclusive of Sundays, to file a written objection to the new viewers:

- (1) A person named in the petition.
- (2) A person who owns land abutting or within one-fourth (1/4) mile of the shoreline or water line of the lake.
- (3) The department.
- (4) The county in which the lake lies if a joint petition is filed.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-15**Objections to viewers; disqualification**

Sec. 15. After the ten (10) days prescribed by section 14 of this chapter have elapsed, the court shall consider each objection to the viewers. If the court disqualifies a viewer who was appointed to replace a previously disqualified viewer, the court shall make another appointment and continue under the same procedure until there is no further disqualification of viewers.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-16**Dismissal of petition**

Sec. 16. If within ten (10) days, exclusive of Sundays, following the date of the hearing of the petition, at least fifty-one percent (51%) of the landowners abutting or within four hundred forty (440) yards of the shoreline or water line of the lake remonstrate in writing against the proposed project described in the petition, the petition shall be dismissed at the cost of the petitioners whose land abuts or lies within four hundred forty (440) yards of the shoreline or water line of the lake.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-17**Referral of petition to viewers**

Sec. 17. (a) If:

- (1) a remonstrance has not been filed within ten (10) days of the date of the hearing; and
- (2) the court considers the petition sufficient;

the court shall make an order referring the petition to the viewers.

(b) An objection to the petition or the acting of the viewers not made within the ten (10) days is considered waived.

(c) In the order referring the matter to the viewers, the court shall fix a time when the viewers shall meet and make a report. The clerk shall deliver to the viewers a duplicate copy of the petition and the order.

(d) A viewer who cannot meet on the date specified by the court may notify the court in writing, and the court shall set another date for the viewers to meet. If it is not possible for all of the viewers to meet on the new day specified by the court, a majority of the viewers may meet and view the proposed project.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-18

Inspection and report by viewers

Sec. 18. The viewers shall do the following:

- (1) Make a personal inspection of the proposed project described in the petition.
- (2) Consider whether the project is practicable and is of public need.
- (3) File a report within ten (10) days from the time of the inspection. The opinion of the majority prevails.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-19

Viewers' findings; dismissal of petition

Sec. 19. If the viewers find that the proposed work is not practicable and of public need:

- (1) the viewers shall make a written report of the findings to the court; and
- (2) the court shall dismiss the petition at the cost of the petitioners who own land abutting or within one-fourth (1/4) mile of the water or shoreline of the lake.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-20

Viewers' findings; referral to county surveyor

Sec. 20. If the viewers find that the proposed work is practicable and of public need:

- (1) the viewers shall make a written report of the finding to the court; and
- (2) the court shall do the following:
 - (A) Direct the surveyor of the county in which the greatest area of the lake lies to prepare plans and specifications for the proposed project.
 - (B) Set a date for the surveyor to file the surveyor's preliminary report with the court.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-21

Surveyor; preliminary report; plans; specifications

Sec. 21. (a) The surveyor's preliminary report must include the following:

- (1) Plans and specifications.
- (2) Cost estimates.
- (3) Damages.
- (4) Assessments.
- (5) Other information that is considered necessary and proper.

(b) The department may on request of the surveyor prepare the plans and specifications.

(c) The surveyor in preparing plans and specifications may, upon

the recommendation of the department, vary from the general plan described in the petition if necessary to carry out the purpose of the petition, subject to final approval by the court.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-22

Surveyor; estimate of costs; assessment of benefits or damages

Sec. 22. (a) The surveyor shall estimate the cost of the project and assess the benefits or damages to all affected landowners, each county in which the lake lies, and the department if:

- (1) the petition is a joint petition between the owners of land abutting or within one-fourth (1/4) mile of the shoreline or water line of the lake and the county or the department; or
- (2) the petition has been filed separately or jointly by the department or the county.

(b) If the petition was filed only by the landowners abutting or within one-fourth (1/4) mile of the shoreline or water line of the lake, the county and the department may not be assessed.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-23

Requirements of assessments of benefits or damages

Sec. 23. The assessing of benefits or damages is to be made:

- (1) on each separate tract of land to be affected;
- (2) to easements held by railways or other corporations; and
- (3) to cities, towns, and other public or private corporations;

including any land or water right or easement injuriously or beneficially affected.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-24

Apportionment of costs of improvements

Sec. 24. (a) The cost of the improvement asked for in the petition shall be paid as follows:

(1) If the petition is filed separately by the owners of land abutting upon or within one-fourth (1/4) mile of the shoreline or water line of the lake, proportionately to the benefits received by the owners.

(2) If the petition is filed jointly by the owners of land abutting upon the lake and the department or the commissioners of each county in which the lake lies or separately by the department or the commissioners of each county in which the lake lies, as follows:

(A) Twenty-five percent (25%) of the cost of the improvement shall be paid by the property owners abutting or within one-fourth (1/4) mile of the shoreline or water line of the lake.

(B) Twenty-five percent (25%) of the cost shall be paid by the county.

(C) Fifty percent (50%) of the cost shall be paid by the

department.

(b) The surveyor shall apportion the cost of the project accordingly in the surveyor's report and notices of assessments and damages shall be sent to all affected parties as prescribed in section 25 of this chapter.

(c) If the lake lies in at least two (2) counties, the cost to be paid by each county must be proportionate to the area of the lake that lies in each county. For the purpose of determining the area of the lake that lies in each county, the surveyor may use aerial photographs made by the United States Department of Agriculture.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-25

Surveyor; notice of hearing

Sec. 25. (a) The court shall set a date:

- (1) not less than thirty (30); or
- (2) more than forty (40);

days after the surveyor's preliminary report has been filed for the surveyor's hearing on the report.

(b) The surveyor shall, within five (5) days after the date for the hearing is set, notify by registered mail, return receipt requested, all owners of land abutting upon or within four hundred forty (440) yards of the shoreline or water line of the lake. The return receipts are prima facie evidence of notice. The notice must give a brief description of the following:

- (1) The project.
- (2) The project's location.
- (3) A description of the owners' land that is assessed or damaged, if any.
- (4) The amount of assessment or damages, if any.
- (5) The date and place of the hearing.

(c) If the residence of a landowner cannot be ascertained or if a mailed notice is returned undelivered, the surveyor shall publish notice to all persons in this category by one (1) publication:

- (1) in a newspaper of general circulation published and printed in the county in which the lake lies; or
- (2) if a paper is not published in the county, in a newspaper in an adjoining county;

at least ten (10) days before the date fixed for the hearing.

(d) The mailed and published notices must notify the owners that all remonstrances and claims for compensation or damages must be filed in writing with the clerk on or before the day of the surveyor's hearing.

(e) The clerk shall notify the surveyor of the receipt of remonstrances or claims on or before the day of the surveyor's hearing.

(f) The surveyor shall file the following:

- (1) Proof of publication of the published notice in the form of a publisher's affidavit.
- (2) Proof of the mailed notice by return receipts.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-26

Surveyor; hearing; final report

Sec. 26. (a) On the day fixed by the court for the hearing on the report the surveyor shall do the following:

- (1) Be present at the place designated in the notice.
- (2) Hear all objections made to damages and assessments.

(b) The surveyor may adjourn the hearing as necessary or to any other suitable or available room in the courthouse of the county that is considered necessary until all objections are heard. All persons interested shall take notice of an adjournment without further notice.

(c) All objections to the damages and assessments must be verified and in writing.

(d) After hearing all objections that are offered to the damages and assessments, the surveyor shall confirm or change the damages and assessments as justice requires. If the damages and assessments are changed, the surveyor shall show the changed amount assessed and the date the change was made.

(e) Upon concluding the hearing the surveyor shall make a final report to the court.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-27

Remonstrance against surveyor's final report; time requirements; contents

Sec. 27. (a) The following entities have ten (10) days from the date the surveyor's final report is filed with the court to remonstrate against the final report:

- (1) An owner of land affected by the work as proposed in the petition or in the surveyor's final report.
- (2) The commissioners of a county in which the lake lies.
- (3) The department.

(b) A remonstrance must be in writing, must be filed with the court, and may be for any of the following causes:

- (1) That the report of the surveyor is not according to law.
- (2) That the proposed work as reported by the surveyor will not be sufficient to accomplish the purpose set out in the petition.
- (3) That the amount of the assessment is exorbitant.
- (4) That the amount of the assessment is too much as compared with other land assessed, specifying the other land.
- (5) That the amount of the assessment of others is too low, specifying the others.
- (6) That the amount of the damages is inadequate.
- (7) That the owner's land will be damaged and the owner has not been given damages.
- (8) That the owner's land has been assessed for benefits and the owner's land will not be benefited or will be damaged if the proposed work is accomplished.
- (9) That the assessment against a county or the department is

greater than the public benefit to be received.

(10) That the proposed project is not practicable and of public need or utility.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-28

Remonstrance against surveyor's final report; order to amend or file new report

Sec. 28. If after a hearing the court decides that any of the causes of remonstrance described in section 27 of this chapter is true, the court may do either of the following:

- (1) Direct the surveyor to amend and perfect the report.
- (2) Set aside the report and refer the matter back to the surveyor for a new report.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-29

Remonstrance against surveyor's final report; new report

Sec. 29. (a) In making an order for a new report, the court shall fix the time when the surveyor shall report.

(b) When a new report is made and filed, a person whose land is reported as affected in the report may remonstrate within the same time and for the same causes that are allowed to remonstrate against the first report. However, a second remonstrance may only concern new matters contained in the second or amended report.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-30

Remonstrance against surveyor's final report; trial of facts

Sec. 30. The court shall try all questions of facts arising on a petition, report, or remonstrance without a jury.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-31

Remonstrance against surveyor's final report; modification of assessments

Sec. 31. (a) If a remonstrance is sustained by the court, the court may modify and equalize the assessments, as justice requires, by doing the following:

- (1) Diminishing the assessments on some tracts and increasing the assessments on other tracts.
- (2) Giving or withholding damages.

(b) For purposes of this section each person whose land is:

- (1) reported as affected; or
- (2) stated in the petition as affected;

is considered to be in court by virtue of the notices originally given to the parties on the pendency of the petition.

(c) If:

- (1) the land described in the petition as affected by the proposed work; and

(2) the surveyor has reported the land as neither benefited nor damaged;
the court may, if the facts and justice warrant, make assessments against the land.

(d) The assessments as changed, modified, equalized, or made are valid.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-32

Remonstrance against surveyor's final report; confirmation of assessments

Sec. 32. If the finding and judgment of the court is against each remonstrance:

(1) the assessments made by the surveyor shall be confirmed;
and

(2) the order confirming is final and conclusive.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-33

Remonstrance against surveyor's final report; dismissal of proceedings

Sec. 33. If the finding and judgment of the court is in support of a remonstrance, the proceedings shall be dismissed at the cost of the petitioners whose land abuts or lies within four hundred forty (440) yards of the shoreline or water line of the lake.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-34

Approval of assessments where no remonstrance filed

Sec. 34. If after the ten (10) days allowed for remonstrances there is no appeal or remonstrance, the court shall do the following:

(1) Make an order declaring the proposed work established and approving assessments as made by the surveyor or as equalized and modified as provided in section 31 of this chapter.

(2) Assign the duty of carrying out the order to the county surveyor.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-35

Appeal from approval and confirmation of assessments

Sec. 35. The order of the court approving and confirming the assessments and declaring the proposed work established is final and conclusive, unless an appeal is taken. An appeal may be taken from the final judgment of the circuit or superior court to the supreme court or court of appeals as in other civil cases.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-36

Contracts for construction of improvements; notice; bidding

Sec. 36. (a) The county surveyor shall proceed to have the

improvement constructed as provided by section 32 or 34 of this chapter. The county surveyor shall keep in the surveyor's office copies of the plans and specifications, which shall be open for the inspection of any landowner interested or any contractor who may be a prospective bidder on the work.

(b) The county surveyor shall give notice in a newspaper of general circulation printed and published in the following:

(1) Each county in which the lake lies.

(2) Each county where land assessed as benefited is situated.

(c) The notice must state that on a certain day and date, which may not be less than fifteen (15) days from the date of the publication, the surveyor will do the following:

(1) Receive sealed bids for the furnishing of all material and labor necessary for the construction of the work.

(2) Let the contract to the lowest and best bidder or reject all bids and re-advertise for new bids.

(d) The surveyor may:

(1) let the work as a whole; or

(2) subdivide the work into at least two (2) sections and let the work in separate contracts that will, in the surveyor's best judgment, most speedily and economically accomplish the completion of the work.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-37

Contractor's bond; requirement

Sec. 37. A person who has successfully bid for the whole or a part of the work shall, when the work is awarded to the person, do the following:

(1) Enter into a contract with the surveyor to perform the work.

(2) Give bond that:

(A) must be approved by the court;

(B) is payable to the state; and

(C) is in a proper penalty for the performance of the contract;

that the person will pay all damages occasioned by nonfulfillment of the contract. The damages may be recovered in a court with jurisdiction.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-38

Contractor's bond; default

Sec. 38. If a person who is assessed is damaged by reason of the default and failure of the contractor to complete the work within the limit, the contractor in default is liable on the bond to the person damaged to the full extent of the damages. The damages may be recovered in a court with jurisdiction in a suit or an action on the bond by the state on the relation of the person damaged for the use of the person or party injured.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-39**Contractor's bond; action on bond**

Sec. 39. The surveyor may bring suit on the bond in a court with jurisdiction to recover any increased cost, expense, or damage of or to the work because of the failure of the contractor.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-40**Contractor's bond; aggregate liability of surety**

Sec. 40. The aggregate liability of the surety on a bond for all liabilities may not exceed the penalty of the bond.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-41**Contracts for construction of improvements; court approval**

Sec. 41. A contract may not be let until the court approves the contract.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-42**Contractor's final report**

Sec. 42. When the contractor has finished the contractor's work, the surveyor shall make a final report to the court showing that the work has been completed and accepted.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-43**New assessments where no contract let**

Sec. 43. (a) If the surveyor is unable to let a contract and construct the proposed improvement for the estimated cost of construction, the surveyor shall report the fact to the court.

(b) The court shall immediately order a new assessment of benefits and damages if requested in writing by at least two-thirds (2/3) of the original petitioners.

(c) If the order for a new assessment is made:

(1) the procedure provided for following the making of the original assessment shall be followed with respect to the new assessment and subsequent actions; and

(2) the landowners have the same right to remonstrate and appeal as is provided for original assessments.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-44**Payment of costs of improvements**

Sec. 44. The costs and expenses of an improvement petitioned for under this chapter shall be out of the county general fund or the general lake improvement fund as described in this chapter, except the part of the cost to be paid by the department. The costs and expenses include the following:

(1) The contract price for the work.

- (2) The traveling expenses of the surveyor.
- (3) The expenses of the viewers.
- (4) Court costs.
- (5) Notices.
- (6) Advertising.
- (7) Attorney's fees.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-45

Surveyor; traveling expenses; compensation; bond

Sec. 45. (a) If the surveyor or the surveyor's deputy uses a car owned by the surveyor or the deputy or a hired conveyance in carrying out the improvement petitioned for under this chapter, the surveyor or deputy may include traveling expenses incident to the work at an amount for mileage at a rate determined by the county fiscal body.

(b) The surveyor and the surveyor's deputy:

- (1) are not entitled to receive compensation for services in addition to the statutory salary except for expenses as provided in section 44 of this chapter; and
- (2) are not required to give any additional bond other than the official bond.

As added by P.L.1-1995, SEC.19. Amended by P.L.10-1997, SEC.19.

IC 14-26-8-46

Viewers; expenses

Sec. 46. The viewers, other than the surveyors, the county commissioners, and the representative of the department, are entitled to the following:

- (1) Six dollars (\$6) a day for expenses incurred in viewing the proposed improvement.
- (2) An amount for mileage at a rate determined by the county fiscal body.

As added by P.L.1-1995, SEC.19. Amended by P.L.10-1997, SEC.20.

IC 14-26-8-47

Attorney's fees

Sec. 47. (a) Except as provided in subsections (b) and (c), the attorney's fees paid may not exceed four percent (4%) of the estimated cost of construction.

(b) If an appeal is taken or other extra proceedings are conducted, the court may allow a reasonable additional amount for the extra legal services actually provided.

(c) If:

- (1) the aggregate cost is less than one thousand five hundred dollars (\$1,500); and
- (2) the petition is filed separately by the owners of land abutting or within one-fourth (1/4) mile of the shoreline or water line of the lake;

the court shall fix a reasonable amount instead of the four percent

(4%) for the petitioners' attorney's fees.
As added by P.L.1-1995, SEC.19.

IC 14-26-8-48

Verified bill; partial payment; full payment

Sec. 48. (a) A payment may not be made for work done under this chapter until a verified bill has been:

- (1) presented to the surveyor;
- (2) approved by the surveyor;
- (3) filed with the auditor; and
- (4) allowed by the commissioners.

(b) A partial payment may not be made to a contractor that exceeds seventy-five percent (75%) of the cost of the improvement.

(c) Full payment may not be made until:

- (1) sixty-one (61) days after the completion and acceptance of the work; and
- (2) after the contractor has filed with the surveyor an affidavit that all bills for labor, other service, or materials that have been used in the construction of or incorporated in the work have been paid in full.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-49

General lake improvement funds

Sec. 49. (a) The board of county commissioners of each county may establish a general lake improvement fund. The fund shall be used to pay for the construction of dams and other works to raise, stabilize, or maintain lake levels under this chapter. The fund includes the following:

- (1) Taxes levied or collected for lake improvement purposes.
- (2) The proceeds of bonds issued and sold for lake improvement purposes.
- (3) Assessments for benefits to property under this chapter.
- (4) Other money that is provided by law to be paid into the fund.

(b) If the board of county commissioners considers it inadvisable to establish a general lake improvement fund, payments for projects under this chapter shall be paid into and shall be paid from the county general fund.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-50

Levy of real property tax

Sec. 50. The fiscal body of a county concerned in work authorized in this chapter may, upon request of the board of county commissioners, approve the levy and collection of a tax upon all real property in the county to raise money to carry out this chapter.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-51

Surveyor; computation and apportionment of costs; certification of assessments to county auditor

Sec. 51. (a) The surveyor in charge of a project established under this chapter shall, within ten (10) days after letting the contract for construction, carefully compute the entire cost of the improvement, including the following:

- (1) Incidental costs, expenses, and damages.
- (2) Attorney's fees as allowed by the court.

(b) The surveyor shall apportion the costs and expenses to the tracts of land assessed in proportion to the total assessment against the respective parcels of land benefited by the construction of the work. The apportionment to the respective tracts or parcels of land may not exceed the benefits assessed against the tracts or parcels, respectively.

(c) The surveyor shall certify the assessments, apportionments, and time to make payments to the county auditor. If the improvement affects the landowners in more than one (1) county, the surveyor shall certify the assessments, apportionments, and time to make payments to the auditor of each other county affected.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-52

Auditor; notice of assessments

Sec. 52. The auditor of each county affected shall give notice by publication in a newspaper published in the county, not less than thirty (30) days before the day for payment of assessments, of the following:

- (1) That the assessment sheet has been prepared and placed in the hands of the county treasurer for collection.
- (2) The time and manner in which the assessments are required to be paid.
- (3) That a person affected who desires to pay the assessment to discharge the person's land from all liability to the assessment on or before the day named in the order may do so.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-53

Auditor; extension of assessments upon duplicate

Sec. 53. (a) The auditor shall then extend the assessments upon a special duplicate:

- (1) to be provided for the auditor at the expense of the county;
- (2) to be known as the lake duplicate; and
- (3) for recording all assessments under this chapter in the county.

(b) Except as provided in subsection (c), in extending the assessments upon the duplicates, the auditor shall, in the first instance, extend the assessments for the full period of payment of all assessments, as fixed by the surveyor.

(c) Assessments of less than twenty-five dollars (\$25) shall be paid within one (1) year.

(d) The auditor shall calculate and add to each successive installment interest at the rate of six percent (6%) per year until the date fixed for payment.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-54

Assessments less than \$25

Sec. 54. (a) The provisions of this chapter permitting the payment of assessments in installments do not apply to assessments of less than twenty-five dollars (\$25).

(b) If:

- (1) one (1) landowner owns more than one (1) tract of land; and
- (2) an assessment of less than twenty-five dollars (\$25) is made against at least one (1) of the tracts of land;

all assessments less than twenty-five dollars (\$25) shall be paid within one (1) year.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-55

Assessments as liens; collection of assessments

Sec. 55. An assessment constitutes a lien upon the tracts or parcels of land and shall be collected at the same time and in the same manner as taxes are collected. After collection the assessments shall be deposited in the lake improvement fund or the county general fund.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-56

Nonpayment of assessments; sale of land

Sec. 56. (a) If an assessment, an installment, or a part of an assessment or installment is not paid when due, the failure to pay results in the same penalties as for the nonpayment of taxes. The land shall be placed upon the list of land to be sold at tax sale, and the land shall be sold at tax sale at the same time and in the same manner as provided under IC 6-1.1-24. The same penalties apply and the same rights are acquired upon purchase at these sales as in other tax sales, including the execution and delivery of tax deeds and the rights and remedies provided in cases of property sold at tax sale.

(b) Personal property or real property other than that assessed may not be sold for the failure to pay an assessment or installment.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-57

Nonpayment of assessments; public land

Sec. 57. (a) If:

- (1) a municipal corporation or other public corporation fails to pay an assessment for benefits or for property the municipal or other public corporation owns; and
 - (2) there is not a provision for selling the property at tax sale;
- the municipal or other public corporation is considered to have

elected to pay in installments at the same time and in the same manner as provided in other cases. The assessments shall be included in the respective lists, and the municipal or other public corporation shall pay the installments to the county treasurer in the same manner as provided in other cases.

(b) A municipal or other public corporation that fails to pay an installment is liable for the nonpayment. The auditor shall enforce collection by bringing an action in the name of the state of Indiana, on the relation of the county treasurer in behalf of the county for the installment that is due and unpaid, together with penalties. The recovery is without relief from valuation and appraisal laws and includes reasonable attorney's fees for collecting the installment.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-58

Assessments as liens; priority; payment; cancellation

Sec. 58. (a) The amount of an assessment as made or approved and confirmed by the court is a lien upon the land assessed from the time the assessment is approved and confirmed. The lien follows all other improvement liens upon the affected real property in order of priority as to date of attachment.

(b) The surveyor charged with the construction of the work shall keep in the surveyor's office a complete copy of the assessments that may, upon demand, be examined by any interested person.

(c) An owner of land assessed for benefits who desires to transfer the property free and clear of the lien for the assessment may deposit with the county treasurer the full amount of the benefits assessed against the tract or parcel of land. When the surveyor has made the final computation to the county auditor, the treasurer shall pay to the person paying the assessment the surplus, if any, over the actual assessment. Whenever the owner of a tract or parcel of land has paid to the treasurer and the treasurer's books show the payment, the lien for the assessment on the tract or parcel of land is automatically canceled.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-59

Lien for labor and materials

Sec. 59. (a) Each subcontractor, laborer, and other person who performs labor or another service or furnishes material that is used in the construction of or incorporated in work under this chapter, including board for laborers and all fuel, oil, and grease used in the operation of machinery used in the construction work, has a lien upon the fund raised for the payment of the work. The lien attaches if written notice is filed with the surveyor:

(1) within sixty (60) days of furnishing the labor or material;
and

(2) that states the amount due and describes the article furnished.

(b) After the receipt of notice under subsection (a), the surveyor

shall withhold payment to the contractor for the work in an amount sufficient to satisfy the lien until the amount is adjusted and paid.

(c) If a contractor and a person claiming a lien disagree on the amount or validity of the lien, the court ordering the construction of the work shall, upon motion of the surveyor, contractor, or person claiming the lien, determine the amount to be paid. The surveyor may pay the amount determined, and on payment the surveyor is released from all liability concerning the payment.

(d) If the surveyor fails to comply with this section, the surveyor is liable on the surveyor's bond for the amount improperly paid over to the contractor.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-60

Liability of surveyor on bond

Sec. 60. (a) If a surveyor fails to perform any work required of the surveyor by this chapter, after ten (10) days written notice to the surveyor by any interested person the surveyor is liable with the surveyor's sureties on the surveyor's official bond:

- (1) for all damages caused by the failure to perform the duty, including reasonable attorney's fees; and
- (2) to the person damaged.

(b) An action on the bond of the surveyor for failure to perform a duty must be brought in the name of the state on the relation of:

- (1) the county auditor; or
- (2) the person injured.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-61

Petition filed under IC 36-9-27; duties of viewers and surveyor

Sec. 61. (a) If a petition is filed under IC 36-9-27 for the construction, reconstruction, alteration, repair, or recleaning of a drainage ditch that extends into or within one hundred sixty (160) rods of a freshwater lake and has a bottom depth lower than the average normal water level of the lake, the petition may ask that:

- (1) the owners of land abutting or within four hundred forty (440) yards of the shoreline or water line of each lake likely to be affected;
- (2) each county in which the lake lies; and
- (3) the department;

participate in the cost of constructing a dam or structure, diversion ditches, pumping stations, or other appurtenances necessary to protect and preserve the water level of the lake.

(b) If a request is made in a petition under subsection (a), the court having jurisdiction of the drainage proceedings shall appoint additional viewers as prescribed in this chapter to represent the county and the department. The viewers shall file a separate report on whether a dam, other structure, diversion ditch, pumping station, or other appurtenance is practicable and of public need.

(c) If the report of the viewers is in the affirmative, the surveyor

for the drainage project shall include in the report plans and specifications for the improvement and apportion assessments and damages in the same manner as prescribed in this chapter governing raising or maintaining lake levels.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-62

Petition filed under IC 36-9-27; court proceedings

Sec. 62. (a) If a petition is filed under section 61 of this chapter for the construction, reconstruction, alteration, repair, or recleaning of a drainage ditch that extends to or within one hundred sixty (160) rods of a freshwater lake and has a bottom depth lower than the average normal water level of the lake and the petition does not request the construction of a dam, other structure, diversion ditch, pumping station, or other appurtenance to protect and preserve the water level of each lake likely to be affected:

- (1) twenty percent (20%) of the owners of land abutting or within four hundred forty (440) yards of the shoreline or water line of the lake;
- (2) a county in which the lake lies; or
- (3) the department;

may file a petition addressed to the court having jurisdiction any time before the court order granting the petition for the drainage project to include a dam, other structure, diversion ditch, pumping station, or other appurtenance necessary to protect and preserve the water level of the lake.

(b) Upon receipt of a petition filed under subsection (a), the court shall set a date for a hearing. On that date the court shall hear all evidence submitted regarding the practicability and public need of a dam, other structure, diversion ditch, pumping station, or other appurtenance to protect and preserve the water level of each lake likely to be affected.

(c) If the court rules that the additional construction is necessary, the same procedure shall be followed for inclusion as if the additional construction were included in the petition for the drainage work.

(d) If the court rules adversely on the practicability or public need of a dam, other structure, diversion ditch, pumping station, or other appurtenance, an appeal may be taken from the final judgment of the circuit or superior court to the supreme court or the court of appeals within thirty (30) days.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-63

Petition filed under IC 36-9-27; additional assessments

Sec. 63. If:

- (1) the construction of a dam, other structure, diversion ditch, pumping station, or other appurtenance in connection with the preservation or stabilization of a lake is petitioned for under section 62 of this chapter in connection with a drainage

proceeding; and

(2) in the surveyor's opinion, the improvement to the lake will:

(A) be beneficial to any person affected by the drainage project; or

(B) in any way provide better drainage than if the water level of the lake is left uncontrolled or undisturbed;

the surveyor for the drainage project may assess a part of the cost of the improvement that would normally be paid by those persons who own land abutting or within four hundred forty (440) yards of the shoreline or water line of the lake to any person affected by the drainage project.

As added by P.L.1-1995, SEC.19.

IC 14-26-8-64

Elevation of lake levels

Sec. 64. (a) The county surveyor shall do the following:

(1) Certify the elevation of a lake level established under this chapter, including the bench mark used for the point of beginning.

(2) Record the elevation of the lake level and the bench mark in the office of the county recorder in each county in which the lake lies.

(b) The elevation of a lake level established under this chapter must refer to at least one (1) of the following:

(1) The United States Coast and Geodetic Survey, first, second, and third order levels.

(2) The United States Geological Survey, third order levels.

As added by P.L.1-1995, SEC.19.